IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

ROBERT ANTONIO JACKSON,)			
	Petitioner,)	
	rentioner,)	
v.)	Case No. CIV-11-09-D
MIKE MULLIN,)	
	Respondent.)	
	Respondent.	,	

ORDER

This matter is before the Court for review of the Report and Recommendation issued by United States Magistrate Judge Robert E. Bacharach pursuant to 28 U.S.C. § 636(b)(1)(B)-(C). Judge Bacharach finds that the Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus is a second or successive petition that has not been authorized pursuant to 28 U.S.C. § 2244(b)(3) and, thus, this Court lacks jurisdiction to consider it. Judge Bacharach further finds that a transfer to the court of appeals is not warranted under *In re Cline*, 531 F.3d 1249, 1252 (10th Cir. 2008), and the Petition should therefore be dismissed.

Petitioner has filed a timely objection in which he does not disagree with Judge Bacharach's characterization of the Petition. Petitioner objects only to its dismissal; he contends that a transfer to the Tenth Circuit is warranted under *Spitznas v. Boone*, 464 F.3d 1213, 1227 (10th Cir. 2006) (citing *Coleman v. United States*, 106 F.3d 339, 341 (10th Cir. 1997)). Petitioner has waived further review of all other issues. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991); *see also United States v. 2121 East 30th Street*, 73 F.3d 1057, 1060 (10th Cir. 1996).

Upon *de novo* consideration of the issue of whether the Petition should be transferred or dismissed, the Court fully concurs in Judge Bacharach's analysis. The guidance provided by the

court of appeals in *Cline* controls the resolution of this issue. There, the court of appeals urged district courts to consider carefully an exercise of discretion under 28 U.S.C. § 1631 and concluded: "Where there is no risk that a meritorious successive claim will be lost absent a § 1631 transfer, a district court does not abuse its discretion if it concludes it is not in the interest of justice to transfer the matter to this court for authorization." *Cline*, 531 F.3d at 1252. For the reasons fully explained

by Judge Bacharach, the Court finds no risk that a meritorious claim will be lost absent a transfer

and that a transfer would not be in the interest of justice. Accordingly, the Court finds that a

dismissal for lack of jurisdiction is warranted.

IT IS THEREFORE ORDERED that the Report and Recommendation [Doc. No. 10] is adopted in its entirety. This action is dismissed for lack of jurisdiction. Judgment shall be entered accordingly.

IT IS SO ORDERED this $\underline{5^{th}}$ day of April, 2011.

TIMOTHY D. DEGIUSTI

UNITED STATES DISTRICT JUDGE